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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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EASTERN PROFIT CORPORATION LIMITED,

Plaintiff,

v. 18 CV 2185 (LJL)
Telephone Conference

STRATEGIC VISION US LLC,

Defendant.

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New York, N.Y.
October 5, 2020
1:00 p.m.

Before:

HON. LEWIS J. LIMAN,

District Judge

APPEARANCES

TROUTMAN PEPPER HAMILTON SANDERS LLP
Attorneys for Plaintiff
BY: JOANNA J. CLINE
CHRISTOPHER B. CHUFF

GRAVES GARRETT LLC
Attorneys for Defendant
BY: EDWARD DEAN GREIM
JENNIFER A. DONNELLI

(The Court and all parties appearing telephonically)

THE COURT: Good afternoon. This is Judge Liman.

Who do we have on who will be speaking for Eastern?

MS. CLINE: This is Joanna Cline, your Honor.

THE COURT: Good afternoon, Ms. Cline.

And for Strategic?

MR. GREIM: Yes. You have Eddie Greim, your Honor.

THE COURT: Good afternoon, Mr. Greim.

MR. GREIM: Good afternoon.

THE COURT: The reason for this call is primarily for me to confer with the parties about whether we're going to go to have a jury trial in a couple of weeks. I want to hear from the parties on that. I can provide a little bit more information before I hear from you. That information is the following:

As I think I alluded to, the court here is doing a heroic job of trying to make sure that there are juries for cases that are ready for a jury trial, with preference given to criminal cases, and recognizing that there are a limited number of jurors for a variety of reasons.

The methodology the court has applied is it's giving preference to the criminal trials, for speedy trial and other reasons, over the civil trials. We get a date that is available to us, but it is subject to the criminal trials that may be ahead of us, not taking that date, so it's somewhat

competitive to get a date. I've had to apply in advance to get a date, but it is subject to criminal trials going first.

I've learned a little bit more information that I can give you all.

The first is that if we were to get a jury, it would probably be for October 25th, or 26th, or maybe 27th, so, in other words, a couple of days earlier than I had scheduled trial for.

The second thing that I have learned is that there are a couple of criminal cases ahead of us in the queue. I've heard from the judge handling one of those cases, who told me that, as of right now, that case is scheduled to go forward, in which case, I would not have a jury for you all. The criminal cases, like civil cases, but maybe even more than civil cases, do have a way of pleading. There are two other criminal cases that are ahead of us. I've not heard from the judges on those cases. Those cases may go away, in which case we would have a jury ready to go, say, October 26th or 27th.

Unfortunately, I can't give the parties any more certainty than that. I can tell the parties that if they wanted to try this to the bench, then I could schedule a bench trial, and we could do that remote, if the parties wanted, or try to do that in person.

But let me hear from you, Ms. Cline, and then Mr. Greim, about where things stand on your respective ends.

MS. CLINE: Yes, your Honor.

So, mindful of the Court's admonition at our last conference, the parties did confer, and I think we have agreement on willingness to stipulate to proceed with the bench trial.

On behalf of Eastern, though, our proposal would be -- let me take a step back. In our view, the resolution of some of the outstanding MSJs could really focus the case, and, by the same token, we think that if the case were to proceed to a bench trial, because there are disputed issues of material fact, it would make sense, in the interests of judicial economy, to bifurcate the case. We really think Eastern's declaratory judgment counts regarding whether the contract is void and its related unjust enrichment claim could be held in a pretty tight bench trial. We think we could get witnesses on and off and probably dispose of that within a day. And, from our perspective, if Eastern were to win those counts, the case would be over. So we think it makes sense to sort of look at that narrow issue before delving into the entirety of the case, including Strategic's fraud claim.

I'll stop there. I can tell you that Mr. Greim does not agree, and we can get into the specifics of why I think bifurcation makes sense, but let me just stop there and see if that answers your Honor's question.

THE COURT: It does. And before I turn to Mr. Greim,

I can tell you that I'm prepared today, this afternoon, to rule on the outstanding motion for summary judgment, which I will do orally, and I will dictate the decision into the record after I hear from Mr. Greim. Maybe that would give you all something to discuss further, and maybe it might be beneficial for us to get together one more time.

Mr. Greim, let me hear from you.

MR. GREIM: Sure, your Honor. This all may well be mooted after we hear your decision on this, but our view is that bifurcation probably doesn't make sense. Really, if you kind of divide the case in half, on the one side, you've got declaratory judgment and unjust enrichment. The declaratory judgment doesn't really do a whole lot for Eastern Profit unless they also go ahead and get the unjust enrichment, get an order to get a million dollars back that way, but then that raises all the big issues we have on the other side of the case.

Likewise, even within declaratory judgment, we've got disputes about the purpose of the agreement, which we believe is the question under the Virginia statute. We also have an in pari delicto with unclean hands defense, which you did not see on summary judgment. You saw in pari delicto, you did not see unclean hands, and those are going to bring in most of the fraud evidence. And so, really, whatever legal theories you use, we're pretty much going to see the same witnesses and the

same evidence, it's just there's one way to deal with them, and not really going the contract route and going in equity, and then there's a way to deal with them going at law, by contract and fraud, but it's the same people and the same evidence.

So, I probably already talked too much. I'm sure all this will be moot in just a few minutes here, but that's why we have a dispute on exactly how a bench trial would go, but I think that's all that makes sense to say right now.

THE COURT: All right.

Well, let me give you my decision on the outstanding motions for summary judgment, and then we can talk about where we go from there.

I'm not going to hide the punch line. The punch line is: I think I've now considered all of the motions for summary judgment, and I'm going to deny each of them finding that they're triable issues of fact. The parties will warn me whether I've missed a motion for summary judgment, but let me go through that.

The parties present a series of issues for me to decide on a motion for summary judgment.

First, Eastern seeks summary judgment on its claim for declaratory relief that the research agreement was never a valid contract on the theory that it was illegal under the Virginia Private Security Services Statute because Strategic was not licensed to provide private investigation services.

Strategic makes a cross-motion for summary judgment, arguing that the contract is valid as a matter of law. Strategic argues that the contract was not for private investigation services as defined in the statute, and that, even if it were, the contract would nonetheless still be valid.

I deny both motions. There are genuine issues of material fact.

Virginia law applies to the question of whether the contract can be enforced because the research agreement was negotiated, drafted, signed, and performed in the State of Virginia. The Virginia Private Security Services Statute states, in relevant part, that, "No person shall engage in the private security services business or solicit private securities business in the Commonwealth without having obtained a license from the department."

The statute defines the "private security services business" as "any person engaged in the business of providing, or who undertakes to provide...private investigators...to another person under contract, express or implied." And I can give you some ellipses as I quoted the statute.

A private investigator is defined elsewhere in the statute, in part, as, "any individual who engages in the business of, or accepts employment to make, investigation to obtain information on (i) crimes or civil wrongs." The statute goes on to state other definitions of private investigator.

I agree with Strategic that reading the statute as a whole, it is intended to regulate entities engaged in quasi-law enforcement activity. Eastern points to the language in the research agreement, stating that the purpose of the research conducted by Strategic was to "prevent crime or other harm to innocent people." It also points to record evidence that goes to show that Strategic, at various times, characterized the activities that it performed for Eastern as investigations and that Strategic surveilled individuals chosen by Eastern by watching them, listening, seeing what they are talking about, and taking photographs of them, activities that are characteristic of law enforcement.

For its part, Strategic points to the language of the research agreement that it was retained to perform business research, reporting, documentation, and other consulting services, none of which require licensure under the Private Security Services Statute. That's the argument.

It also relies on testimony from Mr. Guo that his objective was a political one to oust the Chinese Communist Party by publicizing information on official corruption, which he viewed as crimes against the Chinese people, democracy, and the rule of law. According to Strategic, Eastern's focus was not on an actual crime or specific victim or person, but a wholesale political attack on the Chinese regime, and the focus was not on the legal system or law enforcement, per se, but on

politics and publicity.

Strategic claims that neither Mr. Guo, nor Eastern ever identified any actual crime or victim of a crime for Strategic to investigate either in the initial talks or in the short period of time that Strategic performed services for Eastern.

The Court cannot grant Eastern's summary judgment motion because the language it focuses on - that the research will be for the purpose of detecting, stopping, and preventing crime or other harm to innocent people - is so broad and general, that it can sweep within it much investigation that had nothing to do with law enforcement or quasi-law enforcement for a crime or civil wrong that has occurred. Moreover, the specific deliverables also are so general, that, while they might include work that would be done by a private investigator of a crime, they also include work that is done by someone not involved in the investigation of the crime or civil wrong.

On the other hand, the Court also cannot grant Strategic's summary judgment motion because, at the very least, the language in the contract stating that its purpose was to detect and prevent crime and civil wrongs raises an issue of fact as to whether what Strategic was contracted to do was traditional private investigator activity. That issue will have to await testimony at trial.

Second, Eastern also seeks summary judgment on

Strategic's claim that it was fraudulently induced to enter the research agreement by Eastern's oral misrepresentation about the purpose for which Eastern requested research. Strategic claims, and has pointed to the testimony of Mr. Guo, that Eastern represented that it was requesting the research because he, Mr. Guo, opposed the Chinese Communist Party. In fact, Strategic alleges Mr. Guo secretly supports the Chinese Communist Party and wanted the research to assist the Chinese Communist Party.

Eastern argues in its summary judgment motion: First, that Strategic's failure to conduct any research on Mr. Guo and its failure to include a representation regarding Mr. Guo's status in the agreement negate any reasonable reliance as a matter of law;

Second, there is no scienter because Mr. Guo had no reason to lie. Eastern could have easily found another investigator if Strategic had refused to do the work for Eastern;

Third, the statement that Mr. Guo was a dissident and opposed to the Chinese Communist Party, wanted to overthrow the Chinese Communist Party, is not a factual statement capable of being proven true or false.

The motion for summary judgment is denied. The record contains evidence that Mr. Guo represented that he was an opponent of the Chinese Communist Party and wanted the research

to overthrow the Chinese Communist Party. It also contains evidence that Strategic relied on references for Mr. Guo and investigated to the extent that it checked with persons who it believed were associated with Mr. Guo to confirm that he was who he represented to be and that he did want to overthrow the Chinese Communist Party.

Although the failure to check readily available information or to ask for a representation in the research agreement is evidence with respect to whether there is reasonable reliance. It is not dispositive, as a matter of law, on that issue.

There also is evidence of scienter in the form both of evidence that Mr. Guo knew what he would say was false and that he had a particular interest in obtaining the services of Strategic, in part, because he was turned down by another investigator.

Finally, Eastern cites no authority, and the Court has found none, that its statement that a person intends to overthrow the Chinese Communist Party is capable of being proven true or false.

Third, Strategic cross-moves for summary judgment plaintiff's claims for breach of contract and undue enrichment. It argues that the claims that it breached a research services agreement by failing to return a $1 million deposit and that it is liable in unjust enrichment for that sum should be

dismissed, and it should be granted summary judgment because the sum of 1 million was paid not by Eastern, but by another entity. It also argues that it should be relieved of any liability by the doctrine of frustration of purpose.

First, with respect to restitution and damages, there is evidence of the following on the summary judgment record: To secure Strategic's services under the research agreement, Eastern agreed to pay a $1 million deposit. The deposit was to be used to pay any monies Eastern owed to Strategic with respect to the final months of contract. The contract also provided that any party might be terminated with 30 days' written notice. It further provided that Eastern could direct other entities to pay the deposit. The deposit was paid by an entity named ACA Capital Group Limited on Eastern's behalf. Eastern agreed to repay ACA the $1 million and took on a debt obligation to it. ACA had been promised the result of Strategic's work. Eastern did not have access to cash at the time with which it would be able to repay the $1 million or indeed interest on the loan.

When Eastern terminated the contract before having incurred 1 million in services, it demanded that the 1 million be repaid to it, Strategic refused and retained the funds. Strategic argues that to pay the funds to Eastern, when ACA was the entity advancing the funds, and Eastern would have no ability to repay ACA, would confer on Eastern a windfall.

I find that Strategic's argument for summary judgment is meritless. There is enough here for Eastern to proceed to trial and claim relief either on a restitution theory or, as Eastern posits in its opposition, on a damages theory.

With respect to restitution, Strategic relies primarily on the restatement of contract Section 370, which states, "A party is entitled to restitution...only to the extent that he has conferred a benefit on the other party by way of part performance or reliance." It argues here the benefit was conferred by ACA and not by Eastern, and Eastern cannot recover restitution.

The language of the comment to the restatement and its illustration, and the cases cited by Strategic, do not support its argument. The comment to the restatement goes on to state that, "A party's restitution interest is his interest in having restored to him any benefit that he had conferred on the other party. Restitution is, therefore, available to a party only to the extent that he has conferred a benefit on the other party...The benefit must have been conferred by the party claiming restitution. It is not enough that it was simply derived from the breach."

The restatement focuses on the fact that a benefit has been conferred by the nonbreaching party equivalent to that which the nonbreaching party is attempting to have restored in a form of restitution. It does not focus on the form in which

the benefit was conferred. In particular, it does not distinguish, for example, between the circumstances where the nonbreaching party takes on a loan and then having received funds from its creditor, sends those funds to the breaching party, and, on the other hand, the circumstance where the nonbreaching party asks its creditors to send the funds belonging to the debtor directly to the breaching party. Strategic does not dispute that restitution would be appropriate in the first instance, the instance in which the money comes to Strategic through Eastern, but finds its origin in a loan taken out by Eastern.

There's no reason in logic or the language of the restatement that Eastern would not be able to obtain restitution in the second instance. Assuming that the funds being transmitted to -- I'm sorry, let me start again. Assuming that the funds being transmitted to Strategic were the property of Eastern, or could be considered to be in constructive possession of Eastern, the return of funds to Eastern simply puts it back in the position where it was before the breach - where it has borrowed and had possession of 1 million from ACA or ownership of the 1 million from ACA.

The cases and illustrations in the restatement also are not helpful. They focus on the fact that there's been some benefit conferred on the breaching party - if there is no benefit, the form of relief you have is damages.

They also focused on the fact that the benefit that is received is, to some extent, at the expense of the nonbreaching party. If there is a benefit obtained from the breaching party, not by the nonbreaching party or not from the nonbreaching party, in the performance of the contract, but by the defendant in breaching the contract -- in other words, if the defendant obtains a benefit for breaching the contract, but that benefit is not at the expense of the breaching party -- such benefit is not recoverable as restitution.

In fact, the principal Second Circuit case relied on by Strategic, *Gerosa v. Savasta & Co*, cuts the other way from its argument. It states, in part, that to make out a claim for restitution, a plaintiff must show that the defendant "holds funds or property that in good conscience should belong to the plaintiff." Here, there is sufficient evidence that the 1 million paid as a deposit on behalf of Eastern from funds Eastern borrowed from ACA belongs to Eastern and should be returned to Eastern. In fact, there has been a breach.

In the alternative, assuming that the $1 million sent to Strategic did not belong to Eastern, there are genuine issues of fact whether Eastern has reliance damages. Eastern's theory here is that in reliance on Strategic's performance to perform under the contract, Eastern sent the $1 million it otherwise would have had a right to from ACA to Strategic, and that, as a result, is now out $1 million that it must repay

ACA.

I find persuasive Judge Spatt's decision and analysis in the *Nature's Plus* case, 98 F. Supp 3d 600, holding that under New York law, a debt obligation incurred in reliance upon a contract may be recoverable as reliance damages even if the obligation has not been paid in full or in part. Judge Spatt explained the logic in *Nature's Plus*: "This rule makes sense as a logical matter. Even if a nonbreaching party has not paid a debt taken in reliance upon a contract, it has still incurred a legal obligation to do so. In this respect, the Court does not find that such a rule bestows a double recovery or windfall on the nonbreaching party...the general principle that for purposes of calculating contract damages, the nonbreaching party cannot be placed in a better economic position than it would otherwise have occupied had the breach not occurred is only helpful insofar as it goes. This is because...the nonbreaching party...incurred a legal obligation to repay in reliance upon the contract." That's the end of the quote in *Nature's Plus*.

The *Nature's Plus* decision was affirmed by the Second Circuit in a summary order that concluded that the plaintiff was entitled to damages with respect to the debt from the third person paying on its behalf because the factfinder could have concluded that the plaintiff remained obligated to repay the loan. That's 646 F. App'x 25 (2016).

I do not find persuasive, as a matter of law, Strategic's argument that neither the $1 million, nor the debt Eastern incurred as a result of ACA paying the 1 million on Eastern's behalf can be reliance damages because the debt was incurred on December 29, 2017, while the research agreement was signed on January 6, 2018.

The fact, at least on this record, is that Eastern accepted ACA's payment of the 1 million to Strategic as satisfaction of ACA's obligation to lend Eastern the 1 million, and that as a result of ACA paying those funds to Strategic and to Strategic retaining them, Eastern is now out of pocket $1 million that it could have used to retire the principal amount of the loan and that it owes to ACA. That is sufficient evidence on the damages theory for the case to go forward.

Nor is Strategic's argument persuasive at this stage that ACA's payment of the 1 million on Eastern's behalf should be considered to be an investment rather than a legitimate debt as a result of which Eastern itself, as opposed to ACA, would have suffered no damages as a result of Strategic's alleged breach of contract in failing to repay the money.

In making this argument, Strategic is essentially asking me to rule that the debt instrument is a sham and conceals the true nature of the economic arrangement. There is evidence to support that proposition. There is evidence that Eastern never had the ability to pay even the interest on the

loan, that ACA would receive the benefit of the research agreement and the work that Strategic was going to do, that Eastern had no real independent existence or substance other than as a Hong Kong bank account, and that the only way Eastern could have repaid ACA was as a result of the success of the venture Strategic had launched.

On the other hand, Eastern argues and presents evidence that ACA has since demanded repayment of the loan and that Eastern acknowledges that it remains obligated to repay the loan, and, thus, the substance of the agreement corresponds with its form. That argument clearly presents a substantial issue at trial.

I note, however, that the fact that the claim for restitution or, in the alternative for damages, is viable does not mean that even if there is a breach, Eastern will be entitled to the full $1 million. Under the doctrine of restitution, the $1 million may be reduced by the reasonable value of the services and goods Strategic conferred on Eastern.

Last, Strategic argues that its performance under the contract was excused by virtue of the doctrine of frustration of purpose. Eastern claims in this case that Strategic failed to deliver on its contractual promise to research 15 specified individuals whose names were provided to Strategic by Eastern.

Strategic argues the first 15 subjects that Eastern gave it to research had records protecting status, meaning that

the information concerning their status and activity were not accessible to traditional legal means and could not be investigated and that, after being informed of that fact, Eastern failed to give it replacement subjects to research.

Eastern has two responses: Number one, even if Strategic could not research the subjects, it, Eastern, has a right to opt not to provide alternative names, but simply to terminate the agreement and that its right to terminate the agreement was not qualified by or conditioned on an obligation to provide alternative names;

And, second, that Strategic has not submitted on the summary judgment record any competent admissible evidence in its ability to conduct the investigation.

I need not consider the first argument. The second argument clearly presents an issue of fact.

So those are my rulings on the outstanding motion for summary judgment.

I'll hear from the parties, but I think what I would like to do is, we've got a trial date. The trial date I set as a firm trial date, and I'd like to keep it and just do this as a bench trial. I am open to an application, if the parties think it's more convenient for them and safer for them collectively for the witnesses to do it remotely. Also, I'm happy to do it in part in the courtroom and in part remotely.

Also, with respect to the request that I try certain

issues first, that is an option that I have, and I think the most orderly way for me to handle that is to give Eastern an opportunity to file a brief with me asking for severance of certain issues for trial and to give Strategic an opportunity to respond. That way, I can consider the question with some amount of deliberation.

But I'll hear from the two of you. Ms. Cline?

MS. CLINE: Thank you, your Honor.

Yes, from Eastern's perspective, we are ready to proceed either in person or via Zoom. It's safe to say that Mr. Greim will disagree with that. And the opportunity to brief on the application request sounds good.

I guess we also, just as a matter of housekeeping, might need to reset a date for us to submit additional deliverables that go with the pretrial memo that sort of need to pivot and turn those into nonjury trial deliverables as opposed to jury trial deliverables. So I guess the Court can give us some guidance.

The parties are teed up to submit our pretrial memo and all the exhibits today, but I think we want to excise from that all of the jury-related issues. So I guess if the Court could give us some guidance on whether we should go ahead with that or whether we should regroup in light of today's rulings and get an extension on the dates and the pretrial memo, whatever the Court would like to do is okay with us.

THE COURT: Mr. Greim?

MR. GREIM: Your Honor, from Strategic's business perspective, the concern that prompted us to reach out to you the Friday before last is still there. The problem is not, and really never was, with a jury trial, per se; the problem has been that we have to go and isolate in New York for 14 days before whatever our trial date is. You might recall, I mentioned the concern trying to watch and see which states appear on the New York quarantine list.

I will say, fortunately, Virginia is now off, and so French Wallop is no longer -- as of today, she could come to New York City tomorrow, and there wouldn't be a problem, but I could not. I would still have to move to New York two weeks in advance and then self-isolate for the 14 days before the trial. And the concern we raise there was, again, not dependent on there being a jury trial. Perhaps not having a jury trial means that the final part of our -- what may be a rather expensive stay in New York may be a day or two less because it will just move more quickly, but there is still the two weeks of having to live there in isolation.

So, that's a hardship. If that went away, there would be no issue whatsoever. I mean, everybody's available, and so I understand that a response to that would be let's do this by Zoom or do maybe parts of it by Zoom. The problem we have there is the witnesses that will be important, there are about

probably four or five witnesses that are really important to hear from in person. We can check off several of those -- well, actually, every witness would be available in New York. The problem is, your Honor, that, I mean, having taken the depositions and defended the depositions of each of those people, they've all been deposed, a few of them require translators, and it makes things difficult. I could not imagine trying to cross-examine these folks using a translator and also doing it by Zoom. I just -- on the one hand, it will be helpful to have the Court there in some ways, and I'll say no more than that, but, on the other hand, it just adds another layer of complication.

And so there's much we could do by Zoom, but I think there are about four or five witnesses -- basically, Mr. Waller, Ms. Wallop, Ms. Wong, Mr. Guo, and Mr. Han Chunguang -- who really I think the Court should see in person and the person asking the questions ought to be there, even if distanced within the courtroom, but they ought to be there with that witness and whatever translator is being used.

THE COURT: I'm sorry. Which witnesses who you intend to call need translators?

MR. GREIM: Mr. Guo and Mr. Chunguang.

One issue -- it has been helpful, your Honor. Thank you for the summary judgment decision. It's apparent that one thing we're going to get into is the ACA-Eastern profit

relationship, and Han Chunguang is sort of one of the key witnesses on that question. He's the one who allegedly signed the loan document, and unless we can track down Mr. William Je, he will be the only witness we will be able to hear from on that, but he also requires a translator.

THE COURT: Ms. Cline, tell me what your position is. I'd like to give you a trial; I'd like to give you a trial quickly. I am concerned that there's not consent on both sides.

I'm also, frankly, concerned, Mr. Greim, that by -- your arguments are ones that might make it difficult for me to give Eastern a trial anytime soon. Actually, maybe I'll direct the question to you.

MR. GREIM: Sure.

THE COURT: Because I do have an option of going forward and saying, listen, quarantine, and I don't have any certainty as to when, nor do you, as to when travel restrictions will be lifted. The prognosis that we have is that the fall and the winter may be worse than what has been. You're the defendant in this case, the plaintiff wants to prosecute the case, and why shouldn't I put you to the choice of either coming here and doing it in court with Mr. Guo or doing it remotely? People have done cross-examinations by Skype remotely.

MR. GREIM: Your Honor, I'm afraid -- I understand it.

I don't like the fact that we're in this unique position here, but we are a counterclaim -- I think our rights are equal here to Eastern Profit's. I know they're the plaintiff. If they want to push ahead, I mean, just to be clear, we do, too. It's the quarantine is the problem. So I feel like I've got a child reading the Odyssey right now, and I feel like we've got Scylla and Charybdis on either side of us here, with, one, ineffective examination, and I think I've got a duty to my client not to -- we've specifically discussed this issue about trying to do things through the computer or on Zoom, given the experience everyone had in the depositions, and I don't think I can do an effective job representing my client that way.

At the same time, it is an extreme hardship, and it will impact our ability to prepare if we are in isolation for those 14 days before the trial. And I am bitterly -- I don't know, I regret the fact that we are the ones -- it only impacts us, and so we find ourselves in the position of having to raise this to the Court, and that we can't do it together, because I think our opposing counsel don't have the same quarantine issues.

But I can't let the issue of the quarantine affect our representation of the client. I can't let it affect their substantive rights here. I don't think it's fair for us to do so. I recognize the power of the Court to control the case, and the docket, and all those things, I recognize everyone's

desire to get this case moving, but it can't come at the expense of effective representation and advocacy, and that's why I have to do this, your Honor. I have to register this objection. I hate the idea that we would have to wait longer, but I think we'd have to wait until the restrictions are lifted, and then we can all come and get it done.

THE COURT: Here's what I think I'm going to do: Ms. Cline, I'm not going to force you to answer on the spot. You're going to be briefing one issue in front of me, which is the issue of severance. What I'd like to do is I'm going to give you all a little bit more time on the pretrial order, a day or two, just to reflect that this is going to proceed as a bench trial. I'm going to keep the date you've got for the trial for now.

Ms. Cline, you're going to brief the issues severance and whether I've got the power, and should exercise it, to have this case go forward either remotely or if you want to make the argument in person, although I don't find that argument all that attractive, but you can convince me.

And, Mr. Greim, you'll respond to that. I think that's the most orderly way to handle it.

Does that make sense to you, Ms. Cline?

MS. CLINE: It does.

THE COURT: How much time do you think you'll need to redo the papers to strip out the jury stuff?

MS. CLINE: So, your Honor, from our perspective, the stripping out isn't the problem. It's -- I think the one undertaking that we've got to think about of it is your procedures require findings and conclusions be submitted with the pretrial for a bench trial, and we haven't done that yet. So I think even today, the parties could probably pivot and submit the rest of the pretrial motion, we just need a little more time on the findings and conclusions.

THE COURT: Does October 15th give you enough -- I'm sorry, October 16th give you enough time?

MS. CLINE: Yes, for us, your Honor.

THE COURT: And, Mr. Greim, does that give you enough time?

MR. GREIM: Yes, it does, your Honor.

THE COURT: Okay.

So I am going to amend my order to make a joint pretrial order due October 16th. It will also reflect that on both sides -- I want to confirm this. Ms. Cline, you are waiving the right to a jury trial?

MS. CLINE: That's correct, we are.

THE COURT: And, Mr. Greim, you're also waiving the right to a jury trial?

MR. GREIM: We are, your Honor.

THE COURT: Then with respect to the briefing of severance and whether I can try this case remotely or try it in

person, Ms. Cline, how much time do you want for your papers with respect to that?

MS. CLINE: Oh, how about 48 hours?

THE COURT: So that gives you October 7 at 5:00 p.m.

And, Mr. Greim, you'll respond on October 9th at 5:00 p.m.

MR. GREIM: Yes, your Honor, that works.

THE COURT: Good.

Is there anything else that would be useful to discuss right now?

MS. CLINE: Not from our perspective. Thank you, your Honor.

THE COURT: Mr. Greim?

MR. GREIM: I don't think so, your Honor.

Just to lay it out clearly, I think if we do have to go forward on November 2nd, and we make this filing on the 9th, I've lost track of my dates, but I think -- I believe it would be the following week that we would need to move out there, but we'll be prepared to do it, but we're going to beg you not to do it.

THE COURT: Actually, let me ask the question. My calendar is open enough. Ms. Cline, if I move the trial to November 9th, would that work for you?

MS. CLINE: I'm just checking. One second, please.

Yes, I think we can make that work.

Mr. Chuff, is that okay with you?

MR. CHUFF: Yes, that's fine with me.

THE COURT: And, Mr. Greim, I know that you are not going to say it works for you in terms of coming to New York, but do you have any immovable trial obstacles or other things that will conflict with November 9th?

MR. GREIM: No, your Honor. We've kind of been keeping the fall open for just this matter, so we are good that next week if we had to go.

THE COURT: Okay. I'll adjourn the trial to November 9th. It also, obviously, takes care of another issue, which is that I had not focused on the fact that I scheduled the first day of the trial for the day before Election Day. So that will ensure that at least what we call Election Day is over.

All right. And I will undoubtedly have a conference after I receive the papers from you all, but I want to look at the papers first before I decide how quickly I want to talk to you.

All right. Ms. Cline, anything else?

MS. CLINE: Nothing further. Thank you.

THE COURT: Mr. Greim?

MR. GREIM: Nothing more, your Honor.

THE COURT: Okay. Thank you, all. Have a good afternoon, stay safe, and stay healthy. And, Mr. Greim, I hope

for all parties' sakes, that the restrictions are lifted.

MR. GREIM: Thank you, your Honor. Thank you very much.

THE COURT: Okay. Thank you. Bye-bye.

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